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Federal Communications Commission
Office of the Secretary

November 22, 2001

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, Maryland 20743

Re: Docket No. 02-278; Notice of Proposed Rulemaking re 1991 TCPA

Dear Ms. Dortch:

In the FCC's Notice of Proposed Rulemaking the FCC invited comments on "a rule to better inform the business community about the general prohibition on unsolicited fax advertising?" *Id.* at 26, ¶ 40.

It is far more aggravating and, in my view, far more time consuming, invasive and expensive to receive an unsolicited fax ad over a computer or fax modem than a fax machine. Junk fax received on paper can be quickly discarded; it is far more time consuming to check e-mail, fail in discerning that the identification of the sender is a purveyor of a junk fax, open it, to only find out, sometimes 10 times a day, that you are an electronic victim of unsolicited fax advertising.

The TCPA defines a fax machine as "equipment ... [that] has the capacity ... to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper". 47 U.S.C. § 227(a)(4) & (a)(4)(B). While I read this to mean that advertisers have violated 47 U.S.C. § 227(b)(1)(C) by using a fax machine to send an unsolicited fax ad, fax advertisers have claimed otherwise.

In all likelihood much to my financial detriment, even if I prevail, I serve as a class representative in a proposed TCPA class action against American Blast Fax, Inc. and a fax advertising client of theirs (AIMCO). AIMCO asserts that the class can not be certified because some of the thousands of unsolicited fax ads that ABF transmitted on its behalf might have been received by computers. This, to me, makes no sense.

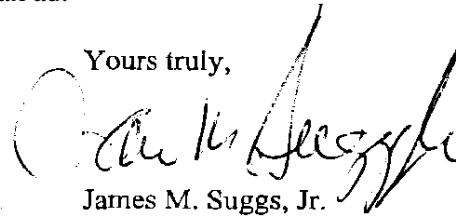
The TCPA prohibits, I thought, the sending of all unsolicited fax ads. Allowing the means by which this junk is received to trump a TCPA claim, whether individual or class, defeats the stated purpose of subsection (a)(4) and (b)(1)(C).

If the FCC wants to create actual deterrence to violating the TCPA in large quantities, the

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the FCC regulations must clarify that **fax** advertisers are **always** liable for using a fax machine to send **an** unsolicited fax ads regardless of the device that receives same so long as such device can be attached to a printer and print the fax ad.

Yours truly,

A handwritten signature in black ink, appearing to read "James M. Suggs, Jr.", written over the printed name.

James M. Suggs, Jr.